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## **Current Issues in Mental Health in Canada: The Federal Role in Mental Health**

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(In Brief)*

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# CURRENT ISSUES IN MENTAL HEALTH IN CANADA: THE FEDERAL ROLE IN MENTAL HEALTH

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## 1 INTRODUCTION

There are many definitions of mental health; some are more encompassing than others, but most address several aspects of a person's well-being. The World Health Organization's widely used definition is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>1</sup>

One of the primary Canadian definitions of mental health, that of the Public Health Agency of Canada, is even more holistic:

[Mental health is] the capacity of each and all of us to feel, think, act in ways that enhance our ability to enjoy life and deal with the challenges we face. It is a positive sense of emotional and spiritual well-being that respects the importance of culture, equity, social justice, interconnections and personal dignity.<sup>2</sup>

This paper identifies the role that the federal government plays in this broad area. It outlines the jurisdictional basis for that role in such areas as direct service provision to certain population groups; the funding of pan-Canadian mental health programs, services and initiatives; and criminal law. It then describes the programs and initiatives that the federal government has introduced in these areas.

## 2 JURISDICTION

### 2.1 DIVISION OF LEGISLATIVE AUTHORITY AND MENTAL HEALTH

Mental health is a complex issue, involving overlapping areas of federal and provincial/territorial jurisdiction. The *Constitution Act, 1867* allocates areas of exclusive legislative authority to the federal government under section 91 and to provincial governments under section 92. These areas are known as "heads of power." Neither mental health nor health more generally is specifically assigned under section 91 or 92, so federal and provincial responsibilities related to health must be inferred from the enumerated heads of power.<sup>3</sup>

Section 92(7), which assigns the provinces authority over the "establishment, maintenance, and management of hospitals," has long been interpreted as allowing the provinces to legislate in the area of health care delivery.<sup>4</sup> Further, under section 92(13), provinces have authority over "property and civil rights in the province," which covers a wide array of commercial and contractual transactions. As well, section 92(16) grants provinces legislative authority over "matters of a merely local or private nature in the province."

Several heads of power assigned to the federal government also have a significant bearing on mental health. For instance, the federal government's authority over criminal law under section 91(27) allows Parliament to legislate in many mental health-related

areas, including determining fitness to stand trial under the *Criminal Code*, regulating narcotics and other drugs under the *Controlled Drugs and Substances Act* and compelling mental health treatment for young people convicted of certain offences under the *Youth Criminal Justice Act*.

The Supreme Court of Canada has also suggested that certain health issues might fall within Parliament's residual "peace, order, and good government" power.<sup>5</sup> Under this power, Parliament may legislate with respect to a matter of "national concern" having a "singleness, distinctiveness and indivisibility" that could not therefore be considered a matter of purely provincial concern. In this context, "indivisible" means that the matter could have effects on other provinces if a given province failed to legislate to address the issue.

Finally, and perhaps most importantly for the purposes of mental health, Parliament has the power under sections 91(1A) and 91(3) to legislate with respect to "public debt and property" and "raising of money by any system of taxation." These powers, often collectively referred to as the "federal spending power," allow Parliament to spend money on initiatives of concern to Canadians in any area.<sup>6</sup> The federal spending power has enabled Parliament to establish several federal initiatives on mental health, which will be discussed below.

## **2.2 ADDITIONAL FEDERAL LEGISLATIVE AUTHORITY**

Beyond the powers discussed above, the *Constitution Act, 1867* assigns to Parliament additional heads of power that form the basis for providing mental health services to certain Canadian populations. Parliament has legislative authority over matters relating to the military under section 91(7), to "Indians, and lands reserved for the Indians" under section 91(24), to "naturalization and aliens" under section 91(25) and to federal prisons under section 91(28).

These powers allow Parliament to enact laws, but do not require it to do so; the federal government has used this authority to assume responsibility for mental health service provision to certain populations. Some of these populations include members of the RCMP, members of the Canadian Forces, veterans, First Nations peoples living on reserve, Inuit people in northern communities;<sup>7</sup> certain classes of immigrants and refugees, and persons incarcerated in the federal correctional system.<sup>8</sup>

## **2.3 FEDERAL LEGISLATION ON MENTAL HEALTH**

Many federal statutes address mental health, some very substantively and others only tangentially.

### **2.3.1 THE CANADA HEALTH ACT**

Arguably the most important piece of federal legislation with respect to health generally, the *Canada Health Act* sets out the criteria and conditions that provinces and territories must meet to receive federal contributions for insured health care services through the Canada Health Transfer. Mental health is explicitly highlighted

as a priority under the Act, which states that “the primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada.”<sup>9</sup>

The Act is not prescriptive; because of the division of powers discussed above, provinces and territories are free to determine most aspects of mental health service delivery. The Act does require, however, that provinces and territories comply with the five criteria it sets out: public administration, comprehensiveness, universality, portability and accessibility. If the Governor in Council determines that a province or territory has failed to comply with one or more of these criteria, it may withhold some or all of the transfer.

### **3 OVERVIEW OF FEDERAL MENTAL HEALTH PROGRAMS AND INITIATIVES**

In practice, the federal government plays a role in the delivery of mental health care in Canada by funding pan-Canadian initiatives that focus on mental health promotion, research and data collection, policy development and improved access to mental health services across the country. As noted above, it also provides mental health services and benefits to specific population groups. These mental health programs and initiatives are outlined below.

#### **3.1 DIRECT DELIVERY OF MENTAL HEALTH SERVICES AND BENEFITS TO FEDERAL CLIENT GROUPS**

The federal government has developed mental health services and benefits for specific population groups for which it has responsibility under the *Constitution Act, 1867*. However, the types of mental health benefits and services offered to these population groups vary, reflecting both their needs and their relationship to the *Canada Health Act*. As both prisoners in the federal correctional system and serving members of the Canadian Forces are exempt from the *Canada Health Act*, the federal government is responsible for providing comprehensive mental health services to these population groups.<sup>10</sup> Members of the RCMP, veterans, First Nations and Inuit people, and some classes of refugees receive supplementary mental health benefits and services from the federal government, in addition to the mental health services provided to them by the provinces and territories under the *Canada Health Act*. Finally, as an employer of the federal public service, the federal government is also responsible for the occupational health and safety of, as well as the provision of health benefits to, federal public service employees. Table 1 outlines the different types of mental health services offered to these population groups by the federal government.

# THE FEDERAL ROLE IN MENTAL HEALTH

**Table 1 – Federal Client Groups in Summary**

Client Groups	Federal Department(s) Offering Service	General Mental Health Services
First Nations peoples on reserve and Inuit communities	Health Canada	<ul style="list-style-type: none"> <li>Community-based mental health services for First Nations peoples on reserve and Inuit communities<sup>a</sup></li> <li>Non-insured drugs and short-term mental health crisis counselling for First Nations peoples registered under the <i>Indian Act</i> and recognized Inuit people through the Non-Insured Health Benefits Program<sup>b</sup></li> <li>Addiction prevention, treatment and aftercare programs<sup>c</sup></li> <li>Mental health, emotional and cultural support services and transportation services to eligible former Indian residential school students<sup>d</sup></li> </ul>
	Aboriginal Affairs and Northern Development Canada	<ul style="list-style-type: none"> <li>Basic social services for First Nations peoples on reserve and Inuit communities, including income supports, home care services, and family violence prevention programs and services<sup>e</sup></li> </ul>
Prisoners in the federal correctional system	Correctional Service Canada <sup>f</sup>	<ul style="list-style-type: none"> <li>Mental health screening and assessment at intake</li> <li>Primary and intermediate mental health services at regular incarceration facilities</li> <li>Intensive care for prisoners with severe acute mental health needs at Regional Treatment Centres</li> <li>Transitional care for release into the community, including establishing links with community mental health specialists who will be providing care after discharge</li> </ul>
Canadian Forces	Department of National Defence (DND) <sup>g</sup>	<ul style="list-style-type: none"> <li>Resilience and mental health training to prepare for deployment<sup>h</sup></li> <li>Short-term counselling, crisis intervention and education services</li> <li>Specialized mental health services</li> <li>In- and out-patient treatment for addictions</li> <li>Treatment for operational stress injuries</li> </ul>
Veterans	Veterans Affairs Canada (VAC)	<ul style="list-style-type: none"> <li>Treatment of operational stress injuries through a network of clinics and in-patient treatment at Ste. Anne's Hospital, Ste.-Anne-de-Bellevue, Que.<sup>i</sup></li> <li>Addiction treatment services</li> <li>Peer support for bereavement and tele-mental health services<sup>j</sup></li> </ul>
Royal Canadian Mounted Police (RCMP)	RCMP/VAC/DND/Health Canada <sup>k</sup>	<ul style="list-style-type: none"> <li>Occupational health services, including specialized health care practitioners who screen and monitor all members to identify mental health risks and provide services to those suffering from operational stress injuries</li> <li>Access to operational stress injury clinics operated by VAC and DND</li> <li>Access to Health Canada's employee assistance program, which provides short-term counselling and crisis intervention services<sup>l</sup></li> <li>Insurance coverage for psychological counselling</li> </ul>



## THE FEDERAL ROLE IN MENTAL HEALTH

Client Groups	Federal Department(s) Offering Service	General Mental Health Services
Some classes of resettled refugees, including government- and privately sponsored refugees receiving income support; victims of human trafficking; and certain people who are being resettled in Canada on compassionate or humanitarian grounds <sup>m</sup>	Citizenship and Immigration Canada	<ul style="list-style-type: none"> <li>Psychological counselling provided by a registered psychologist</li> </ul>
Federal public service employees	Treasury Board Secretariat	<ul style="list-style-type: none"> <li>Insurance coverage for psychological counselling and drugs not provided through provincial/territorial insurance plans (Public Service Health Care Plan)<sup>n</sup></li> <li>Access to Health Canada's employee assistance program</li> </ul>

- Notes:
- a. Health Canada, ["Brighter Futures and Building Healthy Communities,"](#) *First Nations & Inuit Health*.
  - b. Health Canada, [Your Benefits – A Guide for First Nations to Access Non-Insured Health Benefits](#), Ottawa, 2012.
  - c. Health Canada, ["National Native Alcohol and Drug Abuse Program,"](#) *First Nations & Inuit Health*.
  - d. Health Canada, ["Indian Residential Schools Resolution Health Support Program,"](#) *First Nations & Inuit Health*.
  - e. Aboriginal Affairs and Northern Development Canada, [National Social Programs Manual](#), Ottawa, 31 January 2012.
  - f. Correctional Service of Canada, [Towards a Continuum of Care: Correctional Service Canada Mental Health Strategy](#).
  - g. Unless otherwise noted, the programs offered by National Defence can be found here: National Defence and the Canadian Armed Forces, [Canadian Armed Forces Mental Health Services](#).
  - h. National Defence, [Road to Mental Readiness \(R2MR\)](#).
  - i. Veterans Affairs Canada, [Mental Health](#).
  - j. Veterans Affairs Canada, [Mental Health: Other Services, Benefits and Supports](#).
  - k. Royal Canadian Mounted Police, [Post Traumatic Stress Disorder](#).
  - l. Health Canada, ["Employee Assistance Program,"](#) *Environmental and Workplace Health*.
  - m. Citizenship and Immigration Canada, [Interim Federal Health Program: Summary of Benefits](#).
  - n. Sun Life Financial, [Public Service Health Care Plan](#), 2006.

### 3.2 PAN-CANADIAN MENTAL HEALTH INITIATIVES

#### 3.2.1 EXPANDING ACCESS TO MENTAL HEALTH HOME CARE SERVICES

In recognition of the need for improved access to community-based mental health services across the country, first ministers agreed, in 2004, to provide "first dollar" insurance coverage (full coverage with no deductible) for short-term acute mental health home care services that would include case management and crisis response services. These services were among the priorities outlined in a 10-year pan-Canadian health care reform agenda.<sup>11</sup> In support of this overall health care agenda, the federal government provided \$41 billion in transfers to the provinces and territories over a 10-year period, which included an additional \$500 million to expand home care services.<sup>12</sup>

### 3.2.2 THE MENTAL HEALTH COMMISSION OF CANADA

In 2007, the federal government established the Mental Health Commission of Canada (MHCC) with \$130 million in funding<sup>13</sup> and a 10-year mandate to act as a “catalyst for improving the mental health system and changing the attitudes and behaviours of Canadians around mental health issues.”<sup>14</sup> The creation of the MHCC was a key recommendation from the Standing Senate Committee on Social Affairs, Science and Technology’s 2006 report *Out of the Shadows at Last: Transforming Mental Health, Mental Illness and Addiction Services in Canada*.<sup>15</sup> The MHCC undertakes numerous projects and initiatives related to mental health, including addressing stigma, helping homeless people living with mental illness, promoting knowledge exchange, and providing people with the skills and tools to help them respond to mental health issues in their daily lives.

In 2012, the MHCC released *Changing Direction, Changing Lives: The Mental Health Strategy for Canada*, which identified six strategic directions to improve Canada’s mental health care system:

- promote mental health across the lifespan in homes, schools and workplaces, and prevent mental illness and suicide wherever possible;
- foster recovery and well-being for people of all ages living with mental health problems and illnesses, and uphold their rights;
- provide access to the right combination of services, treatments and supports, when and where people need them;
- reduce disparities in risk factors and access to mental health services, and strengthen the response to the needs of diverse communities and Northerners;
- work with First Nations, Inuit, and Métis to address their distinct mental health needs, acknowledging their distinct circumstances, rights and cultures; and
- mobilize leadership, improve knowledge, and foster collaboration at all levels.<sup>16</sup>

The strategy is rooted in the concept of recovery, which focuses on supporting an individual’s journey towards a meaningful life while dealing with a mental illness.<sup>17</sup> The concept of recovery is linked to hope, engagement, social connectedness and self-determination of individuals with mental health problems and illnesses. While it includes the clinical approach to recovery, which addresses the symptoms of mental illness through medical treatment, it is broader than a clinical approach. The strategy also links the concept of recovery to a rights-based approach to mental health, which sees disability as arising from the ways in which external environments interact with the person rather than from the person’s condition alone.<sup>18</sup> Finally, the strategic directions address the mental health needs of different population groups, recognizing that disparities in mental health outcomes can result from factors such as socio-economic status, geography, gender, culture, age, race and history.

The MHCC did not direct its 109 recommendations toward a particular level of government, but rather called on all jurisdictions to develop their own action plans to implement the strategy's recommendations. In fact, the strategy noted that most provinces and territories have either developed their own mental health strategies or are in the process of doing so.<sup>19</sup> The MHCC sees the federal government as having a role to play in supporting these efforts by strengthening data collection and research, promoting knowledge exchange and measuring progress through common mental health indicators.<sup>20</sup> It also encourages collaboration across jurisdictions to ensure continuity in the delivery of mental health services for federal client groups. Finally, it calls on all governments to increase the proportion of health spending devoted to mental health from 7% to 9% over 10 years, and increase the proportion of social spending devoted to mental health by two percentage points from current levels.<sup>21</sup>

### 3.2.3 MENTAL HEALTH PROMOTION

According to the Public Health Agency of Canada (PHAC), mental health promotion is defined as the process of enhancing the capacity of individuals and communities to take control over their lives and improve their mental health.<sup>22</sup> It focuses on increasing the self-esteem, coping skills, social support and well-being of individuals and communities, regardless of whether they have a mental illness. The PHAC's Mental Health Promotion program coordinates federal/provincial/territorial action on mental promotion, which includes working with stakeholders and partners to support the design of policies and programs that foster positive mental health and address the underlying factors that contribute to poor mental health, such as poverty, homelessness and unemployment.<sup>23</sup>

### 3.2.4 RESEARCH AND DATA COLLECTION

The federal government also provides funding for mental health research and data collection. The Canadian Institutes of Health Research, the federal government's health research funding agency, support research into the functioning and disorders of the brain and the mind, including neurological disease and disorders, mental health, mental illness and all forms of addiction, through their Institute of Neurosciences, Mental Health and Addiction (INMHA).<sup>24</sup> The federal government also collects and analyzes data on mental health in Canada through surveys conducted by Statistics Canada, including the *Canadian Community Health Survey*,<sup>25</sup> *Aboriginal Peoples Survey*,<sup>26</sup> and the *Longitudinal Survey of Immigrants to Canada*.<sup>27</sup> The Canadian Institute for Health Information also collects data on hospitalizations for mental illness in Canada through its Hospital Mental Health Database, which helps provide information on the factors influencing mental health and addictions, as well as the treatment of these conditions.<sup>28</sup>

## 4 CONCLUSION

Jurisdiction over mental health is complex because mental health is too multi-faceted to be restricted to a single level of government. It is an area where provincial and territorial health care service delivery may intersect with federal regulations in criminal law, as well as with federal initiatives that are pan-Canadian in scope or targeted toward specific population groups. The Supreme Court of Canada has held that health law is an area in which “co-operative federalism” should be encouraged.<sup>29</sup> Support for such a co-operative approach to mental health is reflected in the MHCC’s Mental Health Strategy for Canada, which calls on governments at all levels to take action in support of its recommendations, as well as to collaborate in areas of shared jurisdiction.<sup>30</sup>

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## NOTES

1. World Health Organization, *Basic Documents*, 43<sup>rd</sup> ed., Geneva, 2001, p. 1.
2. Public Health Agency of Canada [PHAC], [Mental Health Promotion](#).
3. For a more detailed discussion of the federal role in health, see Marlisa Tiedemann, [The Federal Role in Health and Health Care](#), Publication no. 2011-91-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 22 September 2011.
4. See for example [Schneider v. The Queen](#), [1982] 2 S.C.R. 112.
5. [R. v. Hydro-Québec](#), [1997] 3 S.C.R. 213; and [R. v. Crown Zellerbach Canada Ltd.](#), [1988] 1 S.C.R. 401.
6. Peter W. Hogg, “Financial Arrangements” in *Constitutional Law of Canada*, 5<sup>th</sup> ed., Carswell, 2007, pp. 6-18–6-19.
7. There has been a constitutional challenge of the interpretation of “Indians, and lands reserved for the Indians.” In *Daniels v. Canada (Minister of Indian Affairs and Northern Development)*, the claimants sought to have the Métis and “non-status Indians” included in the interpretation of section 91(24). “Non-status Indians” is generally understood as referring to individuals who identify as members of First Nations, but who are not registered under the *Indian Act*. The decision has been appealed, and, even if the claimants are ultimately successful, it is unlikely that there would be any immediate change to mental health service provision to these communities. It could, however, mean important policy changes in the future, particularly in terms of those communities’ access to federal mental health programs. See [Daniels v. Canada \(Minister of Indian Affairs and Northern Development\)](#), 2013 FC 6.
8. National Defence and the Canadian Armed Forces, [Health Services](#); Veterans Affairs Canada, [Mental Health](#); Health Canada, [“First Nations and Inuit Health Branch,” About Health Canada](#); Citizenship and Immigration Canada, [Interim Federal Health Program: Summary of Benefits](#); and [Corrections and Conditional Release Act](#), S.C. 1992, c. 20.
9. [Canada Health Act](#), R.S.C. 1985, c. C-6, s. 3.
10. Health Canada, [Canada Health Act: Annual Report 2011–2012](#), Ottawa, 2012.
11. Health Canada, [“First Ministers’ Meeting on the Future of Health Care 2004,” Health Care System](#), 16 September 2004.
12. Health Canada, [“New Federal Investments on Health Commitments on 10-Year Action Plan on Health,” Health Care System](#), 16 September 2004.

13. Department of Justice, [\*Background – Mental Health\*](#), March 2013.
14. Mental Health Commission of Canada [MHCC], [\*About MHCC\*](#).
15. Senate Standing Committee on Social Affairs, Science and Technology, [\*Out of the Shadows at Last: Transforming Mental Health, Mental Illness and Addiction Services in Canada\*](#), 2006.
16. MHCC, [\*Changing Direction. Changing Lives: The Mental Health Strategy for Canada\*](#), Calgary, 2012.
17. Ibid., p. 26.
18. Ibid., p. 33.
19. For a complete overview and analysis of provincial and territorial mental health strategies, please see Sherri Torjman and Anne Makhoul, [\*Knowledge Exchange for Mental Health\*](#), Caledon Institute of Social Policy, Ottawa, June 2013.
20. MHCC (2012), p. 85.
21. Ibid., p. 97.
22. Public Health Agency of Canada, [\*Frequently Asked Questions\*](#).
23. PHAC, [\*Mental Health Promotion\*](#).
24. Canadian Institutes for Health Research, [\*About INMHA\*](#).
25. Statistics Canada, [\*Canadian Community Health Survey – Mental Health \(CCHS\)\*](#).
26. Statistics Canada, [\*Aboriginal Peoples Survey \(APS\)\*](#).
27. Statistics Canada, [\*Longitudinal Survey of Immigrants to Canada \(LSIC\)\*](#).
28. Canadian Institutes of Health Information, [\*Mental Health and Addictions\*](#).
29. [\*Canada \(Attorney General\) v. PHS Community Services Society\*](#), 2011 SCC 44.
30. MHCC (2012), p. 85.